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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,066	09/26/2001	James D. Thomas	PIONEER/TGP	1436
23378	7590	05/14/2004	EXAMINER	
BRADLEY ARANT ROSE & WHITE, LLP INTELLECTUAL PROPERTY DEPARTMENT-NWJ 1819 FIFTH AVENUE NORTH BIRMINGHAM, AL 35203-2104			RIVELL, JOHN A	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/964,066	THOMAS, JAMES D.
	<b>Examiner</b> John Rivell	<b>Art Unit</b> 3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 2/20/04 (amendment, drawings).
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-86 is/are pending in the application.
- 4a) Of the above claim(s) 15-86 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,5-8,10 and 12-14 is/are rejected.
- 7) Claim(s) 4,9 and 11 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 20 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

Claim 2 has been canceled. Claims 1 and 3-86 remain pending.

Applicant's arguments with respect to claims 1 and 3-14, filed February 20, 2004 have been considered but are moot in view of the new ground(s) of rejection.

Claims 15-86 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-8 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roll in view of Willkins.

The patent to Roll discloses "a modular plumbing assembly for connection to a plumbing fixture, the assembly comprising two pre-configured water pipes (14) and a pre-configured drain pipe (16), with each of the pre-configured water pipes (14) comprising an angled lateral water pipe fixture extension of predetermined length (at the outlet of each "T" fitting 34) and an air chamber (read on the internal chamber of each pipe 14 extending above each "T" fitting) at predetermined locations thereon..., the pre-configured drain pipe comprising an angled lateral drain connection of predetermined length at a predetermined location thereon (at the outlet of elbow 30)... and the pre-configured water pipes and the pre-configured drain pipe being all held in a generally predetermined spatial relationship to each other by at least one rigid bracket (20 or 22) so that the plumbing assembly is at an appropriate finished height and orientation for connection to the plumbing fixture" as recited in claim 1.

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Thus the patent to Roll discloses all the claimed features with the exception of having "sealed ends" on all of the water pipes and the drain connection.

The patent to Willkins discloses that it is known in the art to employ, in a modular prefabricated rough plumbing unit, a plurality of water pipe "lateral extensions" such as at stubs 36, 45 and drain extensions at bend 34. Although not readily apparent from the drawings, each of these lateral extensions is believed to include a "sealed end" by reason that, at column 4, lines 65+ "both the waste and hot and cold water systems will be sealed and pressure tested before sealing to insure against leakage after installation. Since such pressure testing and sealing of the units will be done at the factory" these units are shipped to the construction site sealed. Thus Willkins discloses "sealed ends" on the hot and cold water supply stubs as well as the drain stub for the purpose of maintaining the integrity of the internal portions of the piping supply and drain system during storage, transport and installation until connected to adjacent units or the final fixture connection and to accelerate construction by eliminating on site pressure testing of the plumbing supply and drain systems.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Roll, lateral extensions for the hot and cold water piping and a lateral extension on the drain and sealed ends on all of the lateral extensions for the purpose of maintaining the integrity of the internal portions of the piping supply and drain system during storage, transport and installation until connected to adjacent units or the final fixture connection and to and to accelerate construction by eliminating on site pressure testing of the plumbing supply and drain systems as recognized by Willkins.

Regarding claim 5, Roll discloses that the "at least one bracket (20 or 22) comprises a base (read on the portion of brace 20 or 22 from the rightmost end leg 46,

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each offset 44 and bulbous portion 46 to the left most end leg 46) with a plurality of openings (44, 46) configured thereon to secure each of the water pipes (14) a predetermined distance from the drain pipe(16)" as recited.

Regarding claim 6 Roll discloses that "the bracket (20 or 22) further comprises at least one leg (a rightmost leg contiguous with the rightmost leg 46 and leftmost leg contiguous with the leftmost leg 46) contiguous with an end of the base, the at least one leg forming an approximate 90 degree angle with the base and further comprising a means (hole(s) 58) to secure the bracket to a frame member (12) as claimed in claim 6.

Regarding claim 7, while Roll is silent as to the materials of the water pipes 14 and drain pipe 16, it is believed inherent that at least the water pipes 14 are "copper" and the drain pipe 16 is "cast iron" given the filing date of the reference as March 1963 and that copper water pipes and cast iron drain pipes are practically industry standards. Clearly then the "water pipes, water pipe extensions and air chambers are manufactured from a material selected from the group consisting of: copper, stainless steel, polyvinylchloride, butylene, poly-butylene and chlorinated polyvinylchloride; and the drain pipe and the drain pipe connection are manufactured from a material selected from the group consisting of: polyvinylchloride, copper and cast iron" as recited. Also, note Willkins column 3, lines 35-42.

Regarding claim 8, the patent to Roll, in view of Willkins as above, discloses all the claimed features with the exception of having a "secondary" duplicate plumbing module for connection to the disclosed plumbing module.

Willkins discloses at column 1, lines 59-64 the employment of plural piping units to be installed at a construction site "in vertical alignment with similar or identical units (for the purpose) of rough plumbing installation in multi-story residential construction."

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Roll, as modified by Willkins above, plural identical units connectable to one another for the purpose of employing the units in multi-story construction Willkins.

Regarding claim 12, Roll discloses a "bracket (20 or 22) of the primary assembly comprises a base (read on the portion of brace 20 or 22 from the rightmost end leg 46, each offset 44 and bulbous portion 46 to the left most end leg 46) with a plurality of openings (44, 46) configured thereon to secure each of the water pipes (14) a predetermined distance from the drain pipe(16)" and in view of the duplicate units taught by Willkins, a "bracket (20 or 22) of the secondary assembly comprises a base (read on the portion of brace 20 or 22 from the rightmost end leg 46, each offset 44 and bulbous portion 46 to the left most end leg 46) with a plurality of openings (44, 46) configured thereon to secure each of the water pipes (14) a predetermined distance from the drain pipe(16)" as recited.

Regarding claim 13, in the device of the combination, "the brackets (20 or 22) of the primary assembly and the secondary assembly each further comprises at least one leg (a rightmost leg contiguous with the rightmost leg 46 and leftmost leg contiguous with the leftmost leg 46) contiguous with an end of the base, the at least one leg forming an approximate 90 degree angle with the base and further comprising a means (hole(s) 58) to secure the bracket to a frame member (12)" as recited.

Regarding claim 14, while Roll is silent as to the materials of the water pipes 14 and drain pipe 16, it is believed inherent that at least the water pipes 14 are "copper"

and the drain pipe 16 is "cast iron" given the filing date of the reference as March 1963 and that copper water pipes and cast iron drain pipes are practically industry standards. Clearly then the "water pipes, water pipe extensions and air chambers are manufactured from a material selected from the group consisting of: copper, stainless steel, polyvinylchloride, butylene, poly-butylene and chlorinated polyvinylchloride; and the drain pipe and the drain pipe connection are manufactured from a material selected from the group consisting of: polyvinylchloride, copper and cast iron" as recited. Also, note Willkins column 3, lines 35-42.

Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roll in view of Willkins as applied to claims 1, 5-8 and 12-14 above, further in view of Harris.

The patent to Roll, as modified by Willkins, discloses all the claimed features with the exception of having "said sealed outer end of one of the water pipe fixture extension (being) pre-marked with a first color and said sealed outer end of the other water pipe fixture extension (being) pre-marked with a second color".

The patent to Harris discloses that it is known in the art to employ color markings such as red color marking for the hot piping and blue color marking for the cold water system for the purpose of identifying the individual hot and cold piping system from each other so as to avoid errant installation during construction.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Roll, as modified by Willkins, color coding on any one part or all parts of the respective hot and cold water system of Roll, including

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color coding the hot system red and color coding the cold system blue for the purpose of avoiding errant installation during construction as recognized by Harris.

Regarding applicants' remarks concerning the above as they may apply, it is believed that Willkins reasonable suggests to one of ordinary skill the employment of sealed ends on the hot and cold water piping system stubs and the drain piping system stubs of a prefabricated modular plumbing unit for the purpose of maintaining the integrity of the internal portions of the piping supply and drain system during storage, transport and installation until connected to adjacent units or the final fixture connection and to accelerate construction by eliminating on site pressure testing of the plumbing supply and drain systems.

Regarding the remarks concerning the employment of duplicate units as recited in claim 8, it is believed that Willkins reasonable suggests to one of ordinary skill in the art the employment of plural identical prefabricated modular plumbing units for use on construction of multi-story dwellings.

Claims 4, 9 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (703) 308-2599. The examiner can normally be reached on Mon.-Thur. from 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (703) 308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John Rivell  
**Primary Examiner**  
**Art Unit 3753**

j.r.